

“(B) with respect to any improvement commenced before March 2, 1986, but only if not less than the lesser of \$1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987.”

#### **§ 186. Recoveries of damages for antitrust violations, etc.**

##### **(a) Allowance of deduction**

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

- (1) the amount of such compensatory amount, or
- (2) the amount of the unrecovered losses sustained as a result of such compensable injury.

##### **(b) Compensable injury**

For purposes of this section, the term “compensable injury” means—

- (1) injuries sustained as a result of an infringement of a patent issued by the United States,
- (2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or
- (3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (commonly known as the Clayton Act).

##### **(c) Compensatory amount**

For purposes of this section, the term “compensatory amount” means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

##### **(d) Unrecovered losses**

###### **(1) In general**

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

- (A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by
- (B) the sum of—
  - (i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and
  - (ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

##### **(2) Injury period**

For purposes of paragraph (1), the injury period is—

- (A) with respect to any infringement of a patent, the period in which such infringement occurred,
- (B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and
- (C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

##### **(3) Net operating losses attributable to compensable injuries**

For purposes of paragraph (1)—

- (A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and
- (B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

##### **(e) Effect on net operating loss carryovers**

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

- (1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by
- (2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91-172, title IX, §904(a), Dec. 30, 1969, 83 Stat. 711.)

#### **REFERENCES IN TEXT**

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

#### **EFFECTIVE DATE**

Section 904(c) of Pub. L. 91-172 provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968.”

#### **[§ 187. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]**

Section, added Pub. L. 91-172, title VII, §707(a), Dec. 30, 1969, 83 Stat. 674; amended Pub. L. 93-625, §3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term “certified coal mine safety equipment”, and special rules applicable to the amortization deduction.

#### **EFFECTIVE DATE OF REPEAL**

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set

out as an Effective Date of 1976 Amendment note under section 2 of this title.

**[§ 188. Repealed. Pub. L. 101-508, title XI, § 11801(a)(13), Nov. 5, 1990, 104 Stat. 1388-520]**

Section, added Pub. L. 92-178, title III, § 303(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-30, title IV, § 402(a)(1)-(3), May 23, 1977, 91 Stat. 155, related to amortization of certain expenditures for child care facilities.

**SAVINGS PROVISION**

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**[§ 189. Repealed. Pub. L. 99-514, title VIII, § 803(b)(1), Oct. 22, 1986, 100 Stat. 2355]**

Section, added Pub. L. 94-455, title II, § 201(a), Oct. 4, 1976, 90 Stat. 1525; amended Pub. L. 95-600, title VII, § 701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97-34, title II, § 262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97-248, title II, § 207(a)-(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97-354, § 5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98-369, div. A, title I, § 93(a), title VII, § 712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

**EFFECTIVE DATE OF REPEAL**

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying this section (as in effect before its repeal) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101-239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

**§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly**

**(a) Treatment as expenses**

**(1) In general**

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

**(2) Election**

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

**(b) Definitions**

For purposes of this section—

**(1) Architectural and transportation barrier removal expenses**

The term “architectural and transportation barrier removal expenses” means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

**(2) Qualified architectural and transportation barrier removal expenses**

The term “qualified architectural and transportation barrier removal expense” means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

**(3) Handicapped individual**

The term “handicapped individual” means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

**(c) Limitation**

The deduction allowed by subsection (a) for any taxable year shall not exceed \$15,000.

(Added Pub. L. 94-455, title XXI, § 2122(a), Oct. 4, 1976, 90 Stat. 1914; amended Pub. L. 98-369, div. A, title X, § 1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99-514, title II, § 244, Oct. 22, 1986, 100 Stat. 2183; Pub. L. 101-508, title XI, §§ 11611(c), 11801(a)(14), Nov. 5, 1990, 104 Stat. 1388-503, 1388-520.)

**AMENDMENTS**

1990—Subsec. (c). Pub. L. 101-508, § 11611(c), substituted “\$15,000” for “\$35,000”.

Subsec. (d). Pub. L. 101-508, § 11801(a)(14), struck out subsec. (d) which related to application of section to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, and to taxable years beginning after Dec. 31, 1983.

1986—Subsec. (d)(2). Pub. L. 99-514 substituted “1983” for “1983, and before January 1, 1986”.

1984—Subsec. (c). Pub. L. 98-369, § 1062(b), substituted “\$35,000” for “\$25,000”.

Subsec. (d). Pub. L. 98-369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by section 11611(c) of Pub. L. 101-508 applicable to taxable years beginning after Nov. 5, 1990,